

Senate Study Bill 1144 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON ZUMBACH)

A BILL FOR

1 An Act providing for certain court actions involving an
2 allegation of a public or private nuisance or the
3 interference with a person's comfortable use and enjoyment
4 of life or property caused by an animal feeding operation,
5 providing for the award of damages, costs, and expenses, and
6 including effective date provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 657.11A Animal agriculture —
2 promotion of responsible animal feeding operations.

3 1. *a. Findings.* The general assembly finds that important
4 public interests are advanced by preserving and encouraging the
5 expansion of responsible animal agricultural production in this
6 state which provides employment opportunities in and economic
7 growth for rural Iowa, contributes tax revenues to the state
8 and to local communities, and protects our valuable natural
9 resources.

10 *b. Purpose.* The purpose of this section is to encourage
11 persons involved in animal agriculture to adopt existing
12 prudent and generally utilized management practices for their
13 animal feeding operations, thereby enhancing the fundamental
14 role of animal agriculture in this state by providing a
15 reasonable level of protection to persons engaged in animal
16 agricultural production from certain types of nuisance actions.

17 *c. Declaration.* The general assembly has balanced all
18 competing interests and declares its intent to preserve
19 and enhance responsible animal agricultural production,
20 specifically animal agricultural producers in this state
21 who use existing prudent and generally utilized management
22 practices reasonable for their animal feeding operations.

23 2. Except as otherwise provided by this section, an animal
24 feeding operation, as defined in section 459.102, found to
25 be a public or private nuisance under this chapter or under
26 principles of common law, or found to interfere with another
27 person's comfortable use and enjoyment of the person's life or
28 property under any other cause of action, shall be conclusively
29 presumed to be a permanent nuisance and not a temporary
30 or continuing nuisance under principles of common law, and
31 shall be subject to compensatory damages only as provided in
32 subsection 3.

33 3. Compensatory damages awarded to a person bringing
34 an action alleging that an animal feeding operation is a
35 public or private nuisance, or an interference with another

1 person's comfortable use and enjoyment of the person's life or
2 property under any other cause of action, shall not exceed the
3 following:

4 *a.* The person's share of compensatory property damages due
5 to any diminution in the fair market value of the person's real
6 property proximately caused by the animal feeding operation.
7 The fair market value of the real property is deemed to equal
8 the price that a buyer who is willing but not compelled to
9 buy and a seller who is willing but not compelled to sell
10 would accept for the real property. The person's share of any
11 compensatory property damages must be based on the person's
12 share of the ownership interest in the real property. For
13 purposes of this section, ownership interest means holding
14 legal or equitable title to real property in fee simple, as a
15 life estate, or as a leasehold interest.

16 *b.* The person's compensatory damages due to the person's
17 past, present, and future adverse health condition. This
18 determination shall be made utilizing only objective and
19 documented medical evidence that the nuisance or interference
20 with the comfortable use and enjoyment of the person's life or
21 property was the proximate cause of the person's adverse health
22 condition.

23 *c.* The person's compensatory special damages proximately
24 caused by the animal feeding operation, including without
25 limitation, annoyance and the loss of comfortable use and
26 enjoyment of real property. However, the total damages
27 awarded to a person who holds an ownership interest in the real
28 property for which damages are awarded under this paragraph "*c*"
29 shall not exceed one and one-half times the sum of any damages
30 awarded to the person for the person's share of the total
31 compensatory property damages awarded under paragraph "*a*" plus
32 any compensatory damages awarded to the person under paragraph
33 "*b*".

34 4. A person who alleges and fails to prove that an animal
35 feeding operation is a public or private nuisance under this

1 chapter or under principles of common law, or an interference
2 with another person's comfortable use and enjoyment of the
3 person's life or property under any other cause of action,
4 shall be liable to the person against whom the cause of action
5 was brought for all costs and expenses, including reasonable
6 attorney fees incurred in the defense of the animal feeding
7 operation as determined by the court. The costs and expenses
8 attributable to reasonable attorney fees shall be taxed as
9 court costs.

10 5. This section shall apply to an animal feeding operation
11 in the same manner as section 657.11, subsection 4.

12 6. This section shall not apply if the person bringing
13 the action proves that the public or private nuisance or
14 interference with another person's comfortable use and
15 enjoyment of the person's life or property under any other
16 cause of action is proximately caused by any of the following:

17 a. The failure to comply with a federal statute or
18 regulation or a state statute or rule which applies to the
19 animal feeding operation.

20 b. The failure to use existing prudent generally utilized
21 management practices reasonable for the animal feeding
22 operation.

23 7. This section does not apply to a person during the
24 time in which the person is classified as a habitual violator
25 pursuant to section 459.604.

26 8. This section does not apply to a cause of action that
27 accrued prior to the effective date of this Act.

28 Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate
29 importance, takes effect upon enactment.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 GENERAL. This bill allows for an affirmative defense to be
34 raised in certain cause of actions in which an animal feeding
35 operation is alleged to be a public or private nuisance or

1 to otherwise interfere with a person's comfortable use and
2 enjoyment of life or property. The cause of action may be
3 brought under Code chapter 657, which addresses private and
4 public nuisances, or under common law principles.

5 FINDINGS AND PURPOSE. The bill includes general assembly
6 findings that the public's interests are advanced by preserving
7 and encouraging responsible animal agricultural production,
8 and states the bill's purpose is to encourage persons involved
9 in animal agriculture to adopt existing prudent and generally
10 utilized management practices for their animal feeding
11 operations.

12 PRIVATE AND PUBLIC NUISANCE. An affirmative defense may be
13 raised if the allegation involves either a private or public
14 nuisance. A private nuisance occurs when a person (defendant)
15 uses the person's land in a manner that unreasonably or
16 substantially interferes with the enjoyment of another person
17 (plaintiff). A public nuisance unreasonably and substantially
18 interferes with the public's use and enjoyment of legal rights
19 common to the public.

20 PERMANENT AND TEMPORARY OR CONTINUING NUISANCES. If the
21 affirmative defense prevails, the animal feeding operation is
22 conclusively deemed to be a permanent rather than a temporary
23 or continuing nuisance. A temporary or continuing nuisance
24 refers to an injury that occurs intermittently and which may
25 be the basis for a number of actions for damages claimed by
26 the same party. A permanent nuisance is expected to continue
27 indefinitely and the award is for an amount equaling the total
28 resulting damages, including future damages that may result
29 from the nuisance as it then exists.

30 LIMITATION ON DAMAGES. The affirmative defense limits
31 compensatory damages as opposed to punitive damages proximately
32 caused by the animal feeding operation and specifies three
33 categories of awards, including (1) damages for any diminution
34 in the fair market value of a person's real property; (2)
35 damages due to a person's past, present, and future adverse

1 health condition based on medical evidence; and (3) special
2 damages for intangible injuries such as annoyance or the loss
3 of comfortable use and enjoyment of real property. In the case
4 of special damages, the total awarded cannot exceed one and
5 one-half times the combined amounts for property damages and
6 damages resulting from an adverse health condition.

7 COSTS. A party who alleges and fails to prove that an
8 animal feeding operation is a public or private nuisance is
9 liable to pay the other party all costs and expenses, including
10 reasonable attorney fees incurred in the defense.

11 DATE OF OPERATION. The affirmative defense may be raised
12 regardless of the established date of operation or expansion of
13 the animal feeding operation.

14 EXCLUSIONS. The affirmative defense is not available
15 in certain circumstances: (1) an animal feeding operation
16 failed to comply with an applicable federal or state statute
17 or regulation, (2) the animal feeding operation failed to
18 use existing prudent generally utilized management practices
19 reasonable for the animal feeding operation, (3) the animal
20 feeding operation is controlled by a person classified as a
21 habitual violator who has committed three or more environmental
22 violations, and (4) the cause of action arose before the bill's
23 effective date.

24 EFFECTIVE DATE. The bill takes effect upon enactment.